IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR

WEDNESDAY, THE 29TH NOVEMBER 2006/8TH AGRAHAYANA 1928

AS.No. 508 of 2001(F)

{O.S.NO.51/1995 OF THE SUB COURT, SULTHAN BATHERY}

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APPELLANT:

T. ABDULLA, S/O.AHAMMEDKUTTY,
AREEKODE AMSOM AND DESOM,
ERNAD TALUK, REPRESENTED BY
HIS POWER OF ATTORNEY HOLDER
ABDUL ALI, S/O.KANHIRALE MUHAMMED ALI,
AREEKODE AMSOM AND DESOM,
POST AREEKODE.

BY ADVS. SRI.M.C.SEN
SRI.M.P.SREEKRISHNAN
SMT.SHAHNA KARTHIKEYAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE
DISTRICT COLLECTOR, WYNAD DISTRICT.

2. DIVISIONAL FOREST OFFICER,
NORTH WAYANAD DIVISION,
MANANTHAVADI.

3. SECRETARY, FOREST DEPARTMENT,
GOVT. OF KERALA,
THIRUVANANTHAPURAM.

BY SPL.GOVT.PLEADER C.M.SURESH BABU

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 29/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.3626/01 IN A.S.NO.508/01

DISMISSED.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(K.R.UDAYABHANU)
JUDGE

29.11.2006.

sk/-

//true copy//

P.S. To Judge.

K.A.ABDUL GAFOOR, J.

A.S.NO.508 OF 2001 F

Dated this the 29th day of November, 2006.

JUDGMENT

The appellant instituted a suit seeking a declaration that demand for an amount of Rs.76790/- by way of revenue recovery proceedings made against him was void, null and non est and for a consequential perpetual injunction restraining the respondents from enforcing such payment by initiating revenue recovery proceedings. He also sought for refund of Rs.20,000/- deposited by him as earnest money. He did not get a decree. The suit was dismissed. Therefore this appeal.

2. The contention, assailing the decree, is that there was inordinate delay in confirming the auction sale of timber in favour of the appellant/plaintiff. The delay was for about a period of six months. The bid was on 5.6.1986. He was a successful bidder for Rs.1,72,013/-. He bid 191 lots of soft wood. The bid was subject to confirmation. The confirmation shall ordinarily come without delay. But it was delayed until

2.12.1986. He could not, thereafter pursue the contract, remit the amount and remove the timber, because in the meantime, the soft wood had perished considerably. Later, because of the non-compliance of the conditions of the contract by the appellant, the department reauctioned the timber on 29.7.1987. It did not fetch the same value, but only a lesser value. The difference, on the strength of the provision contained in the conditions for action sale, is sought to be realised from the appellant. That comes to the tune of Rs.76,790/-. The conditions for auction sale, which the appellant had accepted, reveal that, in case of default, any loss sustained by the Government or the Department could be realised by way of revenue recovery proceedings. When there is such provision in the conditions for auction sale which the appellant had agreed, he cannot now contend that the revenue recovery proceedings initiated against him is illegal and consequently null and void. It is permissible in terms of the conditions of auction sale which the appellant had accepted. There is no case either in the plaint or in the

deposition of the appellant as PW.1 that immediately on receipt of the confirmation of the sale on 2.12.1986 he had inspected the timber lot and found it perished and informed the Department accordingly. There is no averment or evidence that he had withdrawn from the contract because the soft wood was perished due to the delay in confirmation. In the absence of such averments and evidence, the appellant cannot contend that the proceedings initiated against him by the department is null and void. Therefore, the court below was justified in denying the decree sought for. When he was a defaulter, necessarily, he shall have to be proceeded by way of revenue recovery proceedings as permissible under the conditions for auction sale which has been accepted by the appellant. Being a defaulter, going by the conditions for auction sale, the earnest money cannot be refunded. The evidence of DW.1 that the timber lot was exposed to sun and rain during the said period will not be sufficient to indicate that the goods had perished. On the other hand, DW.1 had, when cross-examined on behalf of

the defendant, had answered that even if it is exposed to sun and rain for 10 months, it will not perish. Therefore, there was no evidence that the timber lot had perished by the time the confirmation was given. Therefore, there is no reason for interference with the judgment and decree appealed against.

Appeal fails, dismissed.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

sk/

//true copy//

PS to Judge

K.A.ABDUL GAFOOR , J.

A.S.NO.508 OF 2001 F

JUDGMENT

29th November, 2006.